can do a better job with our appropriations bills than last year. But I repeat, we are not going to be held hostage by the unreasonableness of the White House. I hope we can work together and get some bills passed. The appropriators want to do that. We have now, with the ethics and lobbying bill passed, transparency in everything we do.

I also express my appreciation to Senator WHITEHOUSE for being here to start work on the FISA bill.

I have said this before and I say it now to my friend who is the manager for the FISA bill for the Republicans, how much we appreciate his devotion to the intelligence matters of this country.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FISA AMENDMENTS ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2248, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2248) to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Pending:

Rockefeller/Bond amendment No. 3911, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleagues for agreeing on a way forward on this bill. This is a very important bill, the Foreign Intelligence Surveillance Act, the FISA Act, of 2008. It gives the intelligence community the tools it needs right now and over the next 6 years to protect the country.

The Protect America Act we passed in Congress and the President signed last August allowed the intelligence community to close critical intelligence gaps, but that legislation expires in less than 2 weeks. We cannot let those gaps reopen. We passed a short-term extension, and that extension will expire when we are preparing to go out on the President's Day recess. We cannot leave our country blind and deaf to threats that terrorists might bring.

We were delayed in December by filibuster, which is the right of all Senators to have extended discussions. And there are those who say we need more time to look at this measure because it is very important and it is very technical and it is controversial. But the Intelligence Committee spent over 9 months looking at FISA modernization. We held hearings, we reviewed the Terrorist Surveillance Program, we looked at the implementation of the Protect America Act, and after that, we came up with a solid bipartisan bill. That is something in which Chairman ROCKEFELLER and I take a great deal of pride because we accommodated many changes and improvements and we did improve on the existing FISA structure, as well as adding items the Protect America Act needed to have but did not have.

The intelligence community is waiting for us to act. We have a bill that is responsible and effective. It addresses the concerns about the Protect America Act, but most of all, it gives the intelligence operators the tools they need and ensures that our private partners will continue to assist the Government.

As I said, this bill came out of the Intelligence Committee on a 13-to-2 vote after months of studying the collection programs. Chairman ROCKEFELLER, whom I thank again, and I worked together to get an agreement that protects America's constitutional rights and the privacy rights of American citizens.

There was a lot of work with the intelligence community representatives and lawyers from the Department of Justice. The Intelligence Committee members and their staffs did an outstanding job coming up with a solution.

Two provisions added during the initial markup without input from the intelligence community needed to be changed. They are great objectives, but they had to be made workable. It was our pleasure to work with Chairman ROCKEFELLER, Senator WHITEHOUSE, and Senator WYDEN to come up with a solution to both these problems, and they are now in the substitute now pending.

The Director of National Intelligence, who is responsible for running our collection programs, said with these two problems fixed, he will support the bill. This is very important to the chairman and to me because we want to pass a bill that works and will become law. It would do no good to pass a bill that has people's good ideas in it or pass a bill that is good for politics but doesn't work for those who are charged with protecting us from the threats our country faces. So the support of this bill by the Director of National Intelligence in particular is critical. With these fixes, we will have a bill the President will sign.

The chairman and I have worked shoulder to shoulder on a bipartisan basis to pass this bill. We will have to take a very careful look at any amendments that are proposed because we don't want to jeopardize the ability of the intelligence community and their private partners to go forward. It is very technical. Each word matters. And we will do our best to point out whether amendments will work. There are several amendments pending that we think will improve the bill but will not bring a veto.

With that, Mr. President, I thank all the Members who have worked with us in close collaboration to get time agreements, to get a list of acceptable amendments, and I am looking forward to moving ahead with this bill just as soon as we can. I thank my colleague from West Virginia and the other colleagues for working together on the Intelligence Committee bill.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, first let me express my appreciation to the distinguished vice chairman of the Senate Intelligence Committee for his very energetic dedication to moving this bill forward. We have not agreed on everything, but nobody can challenge his dedication to moving a bill and to making progress on this issue.

AMENDMENT NO. 3920 TO AMENDMENT NO. 3911

Mr. President, per the pending agreement, I call up amendment No. 3920, the Whitehouse amendment.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for himself, Mr. ROCKEFELLER, and Mr. LEAHY, proposes an amendment numbered 3920.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide procedures for compliance reviews)

On page 19, between lines 20 and 21, insert the following:

''(7) COMPLIANCE REVIEWS.—During the period that minimization procedures approved under paragraph (5)(A) are in effect, the Court may review and assess compliance with such procedures and shall have access to the assessments and reviews required by subsections (k)(1), (k)(2), and (k)(3) with respect to compliance with such procedures. In conducting a review under this paragraph, the Court may, to the extent necessary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a). The Court may fashion remedies it determines necessary to enforce compliance.

Mr. WHITEHOUSE. Mr. President, in this debate about revising FISA and cleaning up the damage done by the President's warrantless wiretapping program, the administration has talked at length about the importance of our foreign intelligence activities. It expends all its rhetorical energy on a topic where we all agree, but it has largely ignored the issue that has been central to our debate: On what terms will this administration spy on Americans?

I rise today in support of an amendment offered by myself; by the distinguished chairman of the Senate Intelligence Committee, Chairman ROCKEFELLER; the distinguished chairman of the Senate Judiciary Committee, Senator LEAHY; Senator SCHUMER of New

York; and Senator FEINGOLD of Wisconsin, that addresses this issue: the privacy of Americans from Government surveillance.

Our amendment reflects the convergence of ideas Senator SCHUMER has been working on in the Judiciary Committee and I was working on in the Intelligence Committee and, similarly, Senator FEINGOLD has played a critical role in advancing this issue in both committees. Both chairmen, Senator LEAHY and Senator ROCKEFELLER, have reviewed it and given it their blessing. It is carefully crafted to incorporate statutory language offered by the Department of Justice as technical assistance.

On this amendment, we have done our homework. What is this amendment about? As a former U.S. attorney and Rhode Island attorney general, I oversaw wiretaps and other surveillance procedures, and I learned that with any electronic surveillance, whether it is a domestic law enforcement investigation or intelligence gathering on international terrorism, information about Americans is intercepted incidentally—in other words, when they are not being targeted by our intelligence or law enforcement agencies but overheard because they are talking to or talking with or even being discussed by someone who is under surveillance. So minimization is the term of art. Minimization is the process for protecting the privacy of Americans who are caught up in surveillance without being the target of the surveillance.

The issue here is privacy rights of Americans, and in domestic law enforcement there are clear, established procedures for minimizing the collection or retention of this information to ensure that the privacy of innocent Americans is protected. In this pursuit, the prospect of judicial review—the prospect of judicial review—is an important part of our protection.

Under the Senate Intelligence bill before us, the court has the authority to approve minimization procedures. It has the authority to approve the procedures, but it is then told that it can't look fully into whether the procedures are being followed. Thus, there is no guarantee the procedures are actually being adhered to by the executive branch on the part of the overseeing court.

I have introduced this amendment to give the FISA Court the same discretionary authority to follow up on the implementation of all these minimization procedures that it has in every other context and that is common to all courts throughout the American system of justice. Chairman ROCKEFELLER and Vice Chairman BOND have already agreed and put into the bill we will vote on that this authority already lies with the court where the target is an American, and I wish to thank Vice Chairman BOND in particular for working with me in bipartisan fashion on that point.

If the target of surveillance is an American inside the United States or if the target of the surveillance is an American overseas, then the court has the authority to review compliance through the minimization procedures. But as will often be the case, the target will be a person outside the United States, a person who is not in America, and then an American could just as easily be incidentally intercepted in these conversations, and they should still have rights, and they should still have protections.

Because minimization serves to protect the incidentally intercepted person, this protection should apply when the incidentally intercepted person is an American, and the court's authority to make sure the rules are being followed should apply there as well. It makes no sense to strip a court of its natural authority based on the identity of the target when the protection runs to the American who is not the target but who has been incidentally intercepted.

It, frankly, makes no sense as a general proposition to limit the court's authority to see whether rules it has approved are being followed. I found no place else in the law, no place at all where the authority of a court to approve an order, a rule, or a procedure is not accompanied by the concomitant authority to see if there is compliance. It is basic. Indeed, it may very well be, if there is litigation on this matter, a court will find that it is so basic to judicial authority that they will imply it. But we should put it in the bill and get it right; otherwise, we are creating in this bill a bizarre and unique quirk in American law, and there is no sensible justification offered for it.

To be clear, this amendment creates no mandates, no cumbersome procedures. Indeed, it may never be used at all. In my experience, as I said, the mere prospect—the mere prospect—of a judicial inquiry into compliance has a salutary effect—a healthy attention-getting, awakening, compliance-enhancing effect—on those who are charged with complying with the law. The opposite, I am afraid, is true as well. When executive officials are assured, as this law would do without this amendment, that the court that approves the minimization procedures is forbidden to police the compliance of those procedures, one can reasonably expect looser compliance in this enforcement holiday.

I know the Bush administration fears and despises judicial oversight, probably with very good reason, but that is no reason that we as a Senate should follow them down this wayward path. Both here, where the FISA bill creates an unheard of limitation on judicial power to examine compliance with its own approved rules, and in the immunity debate, where we are being led as a legislature into ongoing legislation to choose winners and losers, we embark into dangerous territory, outside the well-established traditions of the separated powers of our American system of government.

Particularly to my colleagues who are members of the Federalist Society, an organization with a declared interest in separation of powers, I hope you will take this occasion to defend those principles.

To quote the distinguished Justice Scalia from a Supreme Court opinion regarding a sense of sharp necessity about this separation of the legislative from the judicial power at the founding of our Government:

> This sense of a sharp necessity . . . triumphed among the Framers of the new Federal Constitution.

And it did so, again quoting the decision:

> . . . prompted by the crescendo of legislative interference with private judgments of the courts.

Going back to a previous decision, United States versus Klein, the U.S. Supreme Court, in a holding that Congress may not establish the rule of decision in a particular case, said of the legislative and judicial powers:

> It is of vital importance that the legislative and judicial powers be kept distinct. It is the intention of the Constitution that each of the great co-ordinate departments of the government—the legislative, executive and the judicial—shall be, in its sphere, independent of the others.

I submit that a court cannot be independent if it is stripped of the duty to determine whether rules and procedures it has the authority to approve are even being complied with.

I urge other Members to support this amendment. I am very gratified to see Senator SCHUMER from New York on the floor. I know he has worked hard on this issue in the Judiciary Committee. I am very grateful that somebody of his experience and distinction would cosponsor this amendment.

I yield to Senator SCHUMER.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. WHITEHOUSE. I yield to Senator SCHUMER.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask for 10 minutes from my colleague from Rhode Island, who has the time.

Mr. WHITEHOUSE. No objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. May I modify that request to make it 12 minutes?

Mr. WHITEHOUSE. Does that leave 3 or 4 minutes, 5 minutes for the chairman?

Mr. SCHUMER. I will move it back to 10. I didn't realize we were that short on time.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island has 20 minutes remaining.

Mr. WHITEHOUSE. The 12 minutes will work, leaving time for the chairman and some to spare.

Mr. SCHUMER. On amendment 2937, I wish to thank Senator WHITEHOUSE

for his leadership on this issue; Senator FEINGOLD and our two great chairs, Senator ROCKEFELLER and Senator LEAHY. I will briefly describe this amendment.

When we debate these issues, our friends on the intelligence side say you cannot stop us with cumbersome procedures that will not allow us to listen in on a phone conversation a terrorist might be engaging in, you have to act quickly. That is a legitimate wish. You certainly do not want to let a phone conversation slip away while you are going through days and days and days in court.

But this amendment has nothing to do with that. We do not interfere with any phone conversation that might legitimately be listened in to, that might be tapped ahead of time.

What we are saying is this: There ought to be oversight to make sure our intelligence agencies obey the rules; that when there is a conversation or a person, an American citizen on the line who should not be listened in to because the conversation is not about the intended subject, that they quickly stop listening.

Now, under present law, there is no oversight, none. So if someone would want to take liberties, in one of the intelligence agencies or other agencies, and listen in to Americans having conversations, citizens, who have no right to be listened in to because they did not involve legitimate security concerns, they could continue to do it and no one would ever know.

That is wrong. The minimization requirements we have placed in this amendment, which was originally in the Judiciary Committee amendments, but, unfortunately, or in large part in the Judiciary Committee amendments—unfortunately that amendment which I supported was defeated—will ensure there is oversight and that we get all the intelligence information we need, without abuse or overstepping of bounds.

That is the perfect balance. It is hard to see how anyone could object to oversight after the fact to make sure people are not abusing the privilege of listening in to phone conversations or other conversations, electronic conversations, American citizens are having.

That is why this amendment I hope will be supported unanimously in this Chamber. Whether you are a conservative or a liberal, Democrat or Republican, someone who leans to the side of making sure we get every bit of information or someone who leans on the side of making sure American liberties are protected, both worthy goals, you can support this amendment.

I wish to once again thank my colleagues for their hard work on an important issue.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I would like to offer my strong support for the amendment offered by Senator WHITEHOUSE to ensure there is explicit written legal authority in this bill for the Foreign Intelligence Surveillance Court to review and to assess compliance with the minimization procedures established for the bill's new acquisition authority.

One of the most serious deficiencies in the Protect America Act was the fact that the FISA Court was not given a role at all in approving the minimization procedures put in place by the Attorney General and the Director of National Intelligence for collection activity. That was fine. But it was insufficient.

Minimization procedures are the procedures that govern the treatment of nonpublic information concerning Americans in the acquisition and retention and dissemination of foreign intelligence.

The Intelligence Committee's bill addressed this deficiency in the Protect America Act by requiring the court to review and approve minimization procedures. The committee, however, learned, and then was happy to take from in our discussions, the Judiciary Committee's better approach to this. We did not, in the Intelligence Committee bill, explicitly authorize the court to assess compliance with these minimization procedures.

As the Senators from Rhode Island and New York have pointed out, there is no point in having something on the books if you cannot be sure it is going to be complied with.

So compliance is a sacred principle. Senator WHITEHOUSE's amendment will ensure that the court can assess the executive branch's compliance with these minimization procedures, be provided with information it needs to make the assessment, and have the authority to enforce this assessment.

The administration objected to the provision reported from the Judiciary Committee allowing the FISA Court to review compliance with minimization procedures as being what it called ''a massive expansion'' of the court's role.

The administration also argued there are enough other oversight mechanisms already in the bill, through requirements on the Attorney General, the Director of National Intelligence, the Inspectors General of the intelligence agencies.

I respectfully disagree with that assessment. Assessing compliance is inherent in the court's role. It is inherent in the FISA Court's role in reviewing and approving minimization procedures in the first place. In fact, without it, without the compliance part of it, the first parts are nice but not sufficient.

Having the court assess compliance with minimization procedures is an important safeguard to ensure there is due care in the handling of, as I say, nonpublic information concerning U.S. persons.

I therefore urge the adoption of this amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I yield myself 5 minutes. I ask that the balance of the time on this side be reserved for Senators HATCH and SESSIONS and others who want to speak.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WHITEHOUSE. Will the vice chairman yield for a question?

Inquiring through the Chair, I am wondering when the vice chairman believes Senators HATCH and SESSIONS might be here?

Mr. BOND. Mr. President, all I know is we were all expected to be back at 5:30. I do not have their flight schedules. We are contacting their offices, but I do not know when they will be back.

Let me move on now to address some of the things that have been said. No. 1, there was a comment about the damage done by the Protect America Act. Nobody has shown any damage done by the Protect America Act. What it has done is given our intelligence community the ability to intercept foreign terrorist electronic communications. It has kept the world and our allies and our own people safer.

If anybody wants to look at that, there are, in our enclosed intelligence rooms, the full description of what has been gained.

The amendment before us, allowing the FISA Court to assess compliance, may sound like a good idea. But when we talk about foreign targeting, we are outside the FISA Court's experience and their expertise.

The FISA Court was created in 1978 to issue orders for domestic surveillance on particular targets. But Congress specifically left foreign surveillance activities to the executive branch and to the intelligence community. This is the first time we have heard that a court, set up to oversee domestic applications for electronic surveillance, should be involved in the foreign targeting efforts dealing with foreign information.

FISA minimization procedures are about protecting the identities of U.S. persons. This comes up all the time in domestic surveillance. But almost all the collection under these foreign targeting acquisitions will be on non-U.S. persons who require no protection under FISA minimization procedures.

I will explain later if I have time, after others have spoken, what the FISA Court itself has said about it. Therefore, it does not make sense to try to get the FISA Court involved in assessing compliance in the foreign targeting arena.

Now, it has been said that a judge, one of the district court judges who is brought in to rule on applications, probable cause applications for domestic surveillance, should go out and review what goes on at the facilities where collections are being made. Now in France, they have a wonderful procedure that goes far beyond anything

we have and would drive many of our civil libertarians nuts.

The investigating magistrate investigates, he prosecutes and he rules on cases. That is a wonderful way of overseeing the whole line of action. As an investigator and prosecutor, he makes a judgment.

We do not have that situation. We do not have that same system. We have courts that rule on controversies. We have given them the power to review the minimization procedures, the written procedures but not to go out and spend the day trying to figure out what is going on where the collections are being held.

What we do have is a very robust system of oversight, contrary to what my colleague from New York said. I will have to agree with him: I agree with all the things he said about the New York Giants. I rooted for them. I thought they were great. I will have to confer with my colleagues from New Hampshire and Maine to see whether they would accept on our side the terrible things he said about the New England Patriots. But I was a born-again Giants fan yesterday.

But when he said there is no oversight, he overlooks the supervisors, the inspector general who is overseeing minimization, the Department of Justice lawyers who are on top of them, and, more importantly, the Intelligence Committee itself. That is our job. Our job is to oversee it, and we intend to continue to oversee it to make sure that system works. Our staff can go out there. Our members can go out there.

I suggest, given the background the distinguished Senator from Rhode Island has in seeking warrants, and overseas warrants, probably nobody in this body will be better able to oversee compliance than the distinguished Senator from Rhode Island, who served as a prosecutor and as attorney general. I assure you not one of the FISA Court judges would have nearly as good a background or as fruitful a time as my colleague from Rhode Island would have.

I believe, therefore, leaving the existing oversight policies in place, with a robust oversight by the Intelligence Committee itself—those of us who have been entrusted to assure the intelligence collection goes forward in an appropriate manner—should be allowed to do so.

Mr. President, I yield the floor and I reserve the remainder of my time under the proposal I made previously.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that my remaining time on this amendment be reserved until a later time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WHITEHOUSE. I yield the floor.

Mr. SCHUMER. Mr. President, I rise as the proud cosponsor of amendment No. 3920, offered by my friend Senator WHITEHOUSE. I supported the Judiciary substitute amendment, and I am disappointed that it was tabled. It contained a number of important safeguards and protections.

However, the Senate still has the opportunity to ensure independent oversight of our intelligence activities. The amendment before us is a key step in that effort. This amendment makes sure that the FISA Court can review the privacy of American communications, and take action to protect that privacy, any time American communications are gathered during the course of foreign intelligence surveillance.

Senator FEINGOLD and I had an early concern that any FISA update needs court oversight with real teeth, and we pushed for these protections to be included in the Judiciary substitute amendment. Senator WHITEHOUSE had the same concern, and so the amendment before us today is the excellent product of many heads working together.

I have always said that when it comes to intelligence policy, we must have three things. First, we need a free and open debate about any measure that affects our security. We are having that debate now. Second, we need clear rules so that our intelligence community knows what is expected and can act within the clear boundaries set out by Congress. I will only support a final bill that contains such rules. Third and finally, we must have an independent arbiter to ensure that those rules are being followed. A rule without oversight is likely to be a hollow rule.

The amendment before us is necessary to put teeth into the Foreign Intelligence Surveillance Court's independent oversight function. This amendment is a simple, commonsense measure, and yet it is also one of the most substantial protections we can provide for Americans. Let me explain why this is so.

As we all know, the bill before us would grant the President broad authority to wiretap communications between two foreign people or between a foreign person and a U.S. person as long as the target of the surveillance is located outside the United States. With these new powers, the intelligence community can collect the communications of law-abiding Americans, without a warrant, if that American happens to be in contact with someone who is up to no good.

But law-abiding Americans expect their private communications to stay private, and rightly so. How can we gather and use the intelligence we need but also protect the privacy of innocent Americans? The administration says that Americans are protected because the intelligence community follows a set of rules called minimization procedures. These rules limit the collection, use, and dissemination of communications to make sure that Americans' privacy is protected. The administration itself sets out these procedures, so they should present no hindrance to our intelligence collection. What the administration does not say is that currently, there is absolutely no independent oversight of whether the administration is following its own rules. The bill before us would allow the Foreign Intelligence Surveillance Court to review the minimization rules on paper, to see whether they pass muster, but no power to review them in practice.

The amendment now before the Senate offers a vast improvement. With this amendment, the court will have the authority to examine the administration's performance and to assess whether the intelligence community is practicing what it preaches. If the court finds problems, it can issue orders to ensure that the administration follows the rules.

I am not suggesting that the court should be setting limits before the fact. I think our intelligence community needs the flexibility to protect our country. But I think it is essential for the court to be able to look back and tell us, with an independent voice, whether the administration was following its own rules to protect the privacy of law-abiding Americans.

This amendment does not restrict our intelligence gathering. It assures meaningful protection for individual Americans, and it helps to promote faith in our Government and our intelligence community. I cannot imagine why any of my colleagues would oppose this amendment. We all know that the fox alone should not be guarding the henhouse. It is just common sense to provide independent, retrospective oversight. I hope and expect that all of my colleagues, on both sides of the aisle, will join me to vote in favor of this amendment.

Mr. LEAHY. Mr. President, the bill we are now considering gives the executive branch unprecedented authority to conduct warrantless surveillance. It would permit the government, while targeting overseas, to review more Americans' communications with less court supervision than ever before. I support surveillance of those who might do us harm, but we also have to protect Americans' civil liberties. One of the most important ways to provide that balance is to ensure a meaningful role for the courts in supervising this new authority.

Unfortunately, the Protect America Act severely diminished the Foreign Intelligence Surveillance Court's role as a check and balance on the executive branch. Under the Protect America Act, the FISA Court cannot conduct oversight over whether the executive branch is complying with the ''minimization'' rules that are a crucial protection for Americans whose communications are incidentally picked up by government surveillance of overseas targets. Judicial oversight of how these safeguards are working is

a critical protection of the privacy of U.S. persons in this area.

I want to praise Senator WHITEHOUSE, who as member of both the Judiciary Committee and the Select Committee on Intelligence did so much work to reverse the courts diminished role and to craft this fundamental provision. His amendment, which was part of our Judiciary bill, would ensure that the FISA Court has the authority it needs to assess the Government's compliance with minimization procedures, to request the additional information it needs to make that determination, and to enforce compliance with its orders. It would make certain that the FISA Court has a meaningful role in overseeing this new surveillance authority.

Minimization procedures are a key protection—indeed virtually the only protection—for the privacy of the conversations of people in the United States that are ''incidentally'' collected as part of this broad new surveillance authority. These could well be completely innocent Americans who happen to be talking to someone overseas. FISA Court oversight of minimization procedures is critical. Without this amendment, the FISA legislation would allow the court to review minimization procedures, but it would not give authority to assess whether the government is complying with those procedures, nor would it permit the court to take any action to correct failure to comply with those procedures. This is a crucial amendment and I urge Senators on both sides of the aisle to support it.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, is it necessary for me to ask that the pending amendment be set aside?

I ask unanimous consent that the pending amendment be set aside.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 3979 TO AMENDMENT NO. 3911

(Purpose: To provide safeguards for communications involving persons inside the United States)

Mr. FEINGOLD. Mr. President, I call up amendment No. 3979.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. WEBB, Mr. TESTER, Mr. BIDEN, Mr. SANDERS, Mr. KENNEDY, Mr. MENENDEZ, Mr. AKAKA, Mr. DODD, and Mr. OBAMA, proposes an amendment numbered 3979 to amendment No. 3911.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. FEINGOLD. Mr. President, the Protect America Act we passed last year was sold repeatedly as a way to allow the Government to collect foreign-to-foreign communications without needing the approval of the FISA Court. Last week, the Vice President defended the Protect America Act by talking about the need to wiretap without a court order ''one foreign citizen abroad making a telephone call to another foreign citizen abroad about terrorism.''

Now, this is something all of us support, every one of us. But what the Vice President did not mention—and what rarely gets discussed—is the Protect America Act actually went much further. It authorized new sweeping intrusions into the privacy of countless Americans. The bill the Senate is considering to replace the PAA does not do nearly enough to safeguard against Government abuse. So this amendment—the Feingold-Webb-Tester amendment—would provide those safeguards, while also ensuring that the Government obtains the information it needs to fight the terrorists who threaten us.

I am, of course, extremely pleased to have the support and cosponsorship of Senators WEBB and TESTER, as well as Senators BIDEN, SANDERS, KENNEDY, MENENDEZ, AKAKA, DODD, and OBAMA. We have worked closely together to develop a workable solution to a difficult problem—a solution I hope the Senate can support.

Now, this is not about whether we will be effective in combating terrorism. This amendment in no way hampers our fight against al-Qaida and its affiliates. This is about whether Americans at home deserve more privacy protections than foreigners overseas. This is about whether anyone outside the executive branch will have a role in overseeing what the Government is doing with all the communications of Americans it collects inside the United States.

We all know the stakes are very high. I want my colleagues to understand the impact the Intelligence Committee bill being considered on the Senate floor could have on the privacy of Americans, because that is exactly what our amendment addresses. This bill does not just authorize the unfettered surveillance of people outside the United States communicating with each other; it also permits the Government to acquire those foreigners' communications with Americans inside the United States, regardless of whether anyone involved in the communication is under suspicion of any kind of wrongdoing at all.

There is no requirement the foreign targets of this surveillance be terrorists, spies, other types of criminals or even agents of a foreign power. The only requirements are that the foreigners are outside the country and that the purpose of the surveillance is to obtain ''foreign intelligence information,'' a term that has an extremely broad definition covering anything involving the foreign affairs of the United States.

The key, of course, is that no court reviews these targets individually. Only the executive branch decides who fits these criteria. So the result is many law-abiding Americans who communicate with completely innocent people overseas will be swept up in this new form of surveillance, with virtually no judicial involvement and virtually no judicial oversight. That is astounding, isn't it? Yet there has been very little discussion of it.

The administration has told us over and over this law is needed to capture foreign-to-foreign, terrorism-related communications. In the State of the Union last week, President Bush defended this law by saying:

To protect America, we need to know who the terrorists are talking to, what they are saying, and what they are planning.

Even the administration's illegal warrantless wiretapping program, as described when it was publicly confirmed in 2005, at least focused on particular al-Qaida terrorists. But what we are talking about now is different. This is the authority to conduct a huge dragnet that will sweep up innocent Americans at home, combined with an utter lack of oversight mechanisms to prevent abuse.

These incredibly broad authorities are particularly troubling because we live in a world in which international communications are increasingly commonplace. Thirty years ago, it was very expensive and not very common for most Americans to make an overseas call. Now, though, particularly with e-mail, such communications are commonplace. Millions of ordinary and innocent Americans communicate with people overseas for entirely legitimate personal and business reasons. Technological advancements, combined with the ever more connected world economy, have led to an explosion of international contacts. Americans call family members overseas; students e-mail friends they met while they were studying abroad; businesspeople communicate with colleagues or clients overseas.

In fact, recently released declassified responses to congressional oversight questions highlight how broad these authorities are. The executive branch was asked whether it could acquire all the calls and e-mails between employees of a U.S. company and a foreign company the U.S. Government is targeting, with no requirement to get a warrant and no requirement that there be some link to terrorism or a specific threat against the United States. The administration did not deny this would be entirely legal under the PAA.

So any American who works at a company that does business overseas should think about that.

Americans should also think about the testimony of the DNI himself, in which he said the PAA would authorize the collection of all communications between the United States and overseas. In other words, the Government

has the authority to collect all international calls and e-mails into and out of the United States—every last one.

We often hear from those who want to give the Government new powers that we just have to bring FISA up to date with new technology. But changes in technology should also cause us to look closely at the need for greater protection of the privacy of our citizens.

If we are going to give the Government broad new powers that will lead to the collection of much more information on innocent Americans, we in the Senate have a duty to provide the necessary safeguards against abuse. That, of course, is what the Feingold-Webb-Tester amendment would do. It allows the Government to acquire all the communications of foreign targets communicating with other foreigners overseas. It also allows the Government to acquire all the communications of overseas terrorists, but it sets up additional safeguards—additional checks and balances—for communications of foreign targets the Government ultimately determines involves someone in the United States.

The amendment has several components. But let me reiterate that the amendment would permit the Government to freely acquire and share all foreign-to-foreign communications without any court oversight. This is, in fact, an enormous change from the pre-PAA law, and this amendment leaves those new authorities intact.

Let me quickly describe how the amendment would work. First, when the Government knows in advance that a foreign target is communicating with someone in the United States, it permits the Government to acquire, without a court order, those communications involving terrorism or suspected terrorists or if someone's safety is at stake. It permits the Government to acquire any other communications into the United States with a court order. The FISA Court would review and approve procedures for making these determinations. As I said, the Government could continue to acquire and use any communications its foreign targets have with other foreigners overseas. That surveillance would continue, again, without any court oversight. Our amendment permits that.

The second part of this proposal recognizes it is frequently not possible for the Government, in advance, to determine whether a particular communication is a purely foreign communication or involves one end in the United States. Thus, the amendment specifies that when the Government does not know in advance with whom a foreign target is communicating, it can acquire all the target's communications without an individualized court order—all of them.

But at some point—and this is one of the keys to our amendment—the Government may realize it has acquired a communication with one end in the United States based on procedures that are developed by the executive branch and reviewed and approved by the FISA Court. Under our amendment, it must then tag or segregate the U.S.-end communication in a separate database.

Now, we know this tagging process is feasible because the Government recently declassified the fact that it does something similar with information obtained under the PAA. The Government can then access, analyze, and disseminate any of these tagged U.S. communications if they involve terrorism or a suspected terrorist or if someone's safety is at stake. All they have to do is this: They have to simply notify the FISA Court after the fact and provide a brief certification that one of these circumstances apply. There is no requirement that these communications be destroyed, in case they include information that may later prove to be useful. The other tagged communications can also be accessed, analyzed, and disseminated if the Government obtains a court order.

The amendment also ensures there is independent oversight of this process. If the FISA Court has any concerns that the terrorism or emergency certifications are being abused, it has authority to ask for additional information, and to limit future access to certain communications if it ultimately determines the Government's certifications to the court are clearly erroneous.

Now, I do understand this amendment imposes a new framework that may take some time to implement. That is why the amendment would not require the Government to implement this new system for up to a year after enactment. I think that is plenty of time to work out any problems and get these procedures up and running.

The amendment also contains a critical oversight provision. It directs the inspectors general of the Department of Justice and the Department of Defense to audit the implementation of compliance with this amendment. These IGs as well as the FISA Court will have access to the American communications that the Government has acquired to make sure the authorities are not being abused.

Taken together, these provisions ensure that we know when Americans' communications are being collected so there is some baseline information available to the FISA Court, Congress, inspectors general, and other independent monitors for tracking impact of the legislation on Americans' privacy.

Tracking this type of information is also good for national security. We have heard the President tell us repeatedly in defense of his so-called terrorist surveillance program that if there are people inside our country who are talking with al-Qaida, we want to know about that. This amendment takes him at his word, and it requires him to set up procedures for identifying those communications in the United States where it is reasonably practical.

We have been hearing for years now that the U.S. Government needs authority to wiretap foreign terrorists outside the United States without individual court orders. This amendment permits that. To take one example, if the U.S. Government has targeted a member of al-Qaida overseas, under this amendment it can acquire all of that target's communications—all of them. If it determines the particular communication is with someone in the United States, the Government would tag it and it could access and disseminate it as long as the FISA Court is simply notified after the fact with a brief certification. That kind of focused, terrorism-related surveillance—the type of surveillance we most want our Government to be engaging in—would continue absolutely unabated. On the other hand, the amendment provides safeguards in case the Government is, in fact, conducting massive dragnet surveillance of communications with people in the United States. In that situation, yes, this amendment would then impose the oversight that is desperately needed. It will make sure that in situations not involving terrorism or personal safety, the FISA Court will play its important role in overseeing the Government's use of communications involving Americans. In other words, it will make sure these authorities are not abused.

We have heard a lot today about minimization procedures, which are supposed to protect against unnecessary disclosure of information about Americans' communications the Government collects, and the importance of giving the FISA Court power to enforce compliance with them. I strongly support that effort. I tried to initiate this issue in the Intelligence Committee. It has been very effectively taken up in the Judiciary Committee by the Senator from Rhode Island as well as the Senator from New York, and it is extremely important that we prevail in that amendment to get those protections. But the supporters of the Intelligence Committee bill claim that minimization procedures are enough to protect Americans' privacy. In fact, the minimization requirements in the Foreign Intelligence Surveillance Act are quite weak. They permit the widespread disseminations throughout the U.S. Government of information about U.S. persons if it is deemed foreign intelligence information which, again, is very broadly defined, and they permit dissemination of the identities of these U.S. persons if ''necessary to understand foreign intelligence information or assess its importance''—also a very loose standard.

Now, we know from our experience in the nomination hearing of John Bolton to be United Nations Ambassador how easy it is for Government officials to obtain access to those identities. And when the FBI receives reports referring to a U.S. person, according to recently declassified Government documents, it

will ''likely request that person's identity'' and will ''likely be'' the requirements for obtaining it. There are other minimization requirements and Government regulations, the details of which are classified. We know in any event that those can be changed at any time. Minimization is simply inadequate in the context of these broad new authorities. More is needed.

The amendment I have developed with Senator WEBB, Senator TESTER, and others is an extremely balanced and reasonable approach to addressing one of the most serious problems with this legislation. It gives the Government full access to foreign-to-foreign communications without any court oversight. And it provides access to communications between a foreigner and an American, if there is a terrorism link or if someone's safety is at stake, without the requirement of a court order. In other words, this amendment gives the administration what it asked for when it demanded these massive new powers. So when the Vice President says we need to pass legislation that permits warrantless wiretapping of ''one foreign citizen abroad making a telephone call to another foreign citizen abroad about terrorism,'' this amendment totally permits that. When the minority leader says the Government needs to be able to ''freely monitor new terrorist targets overseas,'' this amendment totally permits that as well.

But this amendment also provides safeguards to make sure that Americans' basic rights are being protected. Too many communications of innocent Americans are going to end up in Government databases under the PAA and under the Intelligence bill for us to ignore this very serious problem.

Any Senator who believes that Americans here at home deserve more privacy protections than foreigners overseas should support this amendment, and any Senator who believes the executive branch should not be granted far-reaching surveillance authorities involving Americans without independent oversight should support this amendment as well.

At this time I ask unanimous consent that the Senator from Montana, Senator TESTER, be recognized to speak on this amendment, and after he has concluded his remarks, that the Senator from Virginia be recognized. Both of these presentations would be allocated from the time I control on this amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, let me say how grateful I am to the Presiding Officer, Senator WEBB, and the next speaker, Senator TESTER, new Members of the Senate who have delved into this very difficult subject and who have tried to achieve the right balance. I don't know of any Senators who are more concerned about protecting the lives of Americans from terrorists, but they also want to make sure that we get this right while protecting the privacy of Americans. So I thank both of them.

I yield to the Senator from Montana.

Mr. TESTER. Mr. President, I thank the Senator from Wisconsin for his fine work on this amendment. My comments today will indicate my full support for it. I hope this body uses its wise judgment to put this on the Intelligence bill as it comes forth. I think it is critically important that we move this amendment forward to protect American citizens from unwarranted wiretapping.

Let me say I am very glad we finally reached an agreement on the amendments to the Intelligence Committee bill that would replace current law, that current law being the Protect America Act. I voted against the Protect America Act this last August because it included measures that would permit the Federal Government to conduct warrantless wiretapping and intercept innocent Americans' communications. We all recognize the need for our Government to have the necessary tools to keep us safe. That is at the forefront in all of our minds. At the same time, we must do this in a way that protects our civil liberties and constitutional rights to privacy. A number of amendments have been offered with that goal in mind, including the one I rise to talk about today: the Feingold-Webb-Tester amendment.

This amendment would require that all inadvertent surveillance of a U.S. person—someone who is a U.S. citizen, a legal permanent resident, or a U.S. corporation—be tagged and sequestered. Right now, under the Protect America Act and under the Intelligence Committee bill that we are currently debating, the Government would be authorized to have unfettered surveillance of all communications of all people outside of the United States without a warrant. This access would also be extended to Americans here in the United States at the other end of that phone call or e-mail message. Americans abroad or those who receive communications from abroad could be wiretapped without a warrant. That deficiency is what this amendment addresses.

Let me be clear. This amendment does not stop surveillance from happening; it merely sets a higher threshold for access to communications that involve Americans. Let me repeat that. It sets a higher threshold for access to communications for those that involve Americans.

The Feingold-Webb-Tester amendment will not impede the collection of foreign intelligence information or compromise our national security. It would merely require that intelligence intercepted overseas of an American citizen's communications would have to be tagged and sequestered before it could be accessed. To be accessed, the intelligence community would have to have a specific warrant to review Americans' overseas communications.

Why is this necessary? Because in the past, the administration implemented a warrantless surveillance program which severely encroached upon our rights against unauthorized search and seizure.

Under the Protect America Act, when we monitor foreign communications, there is no requirement that anyone involved in the communication be under any suspicion of wrongdoing. As a result, simply communicating with someone in a foreign country opens any American to surveillance. This is most often the case when a conversation starts abroad and ends up with someone in the United States. Why? Because the Government must meet only two criteria: that at least one party to the communication be outside of the United States, and that the purpose of the surveillance is to obtain foreign intelligence.

This overreaching protocol is even more expansive than the administration's illegal warrantless wiretapping program which is focused on people targeted because of their involvement with suspected terrorists. I am opposed to the widespread wiretapping and surveillance of innocent Americans.

The Director of National Intelligence has openly stated that the current law, the Protect America Act, allows full collection of all international communications into and out of the United States, well beyond what the Government says it needs to protect the American people. Further amendments will be offered during the course of this debate that explicitly state such widespread full collection of all international communication is not authorized. However, as it stands, any time you communicate with someone overseas by e-mail or by phone, your conversation could very well end up in a Government database somewhere.

These days, international communications are commonplace. Many Americans have friends and family living overseas studying or for business or vacationing. When they return, they often keep in touch with the friends they have made while living abroad. For example, if you are on a vacation in Europe and call home to check on your elderly parents, the entire conversation could get caught in the crosshairs of this foreign surveillance program. That is not right and it does not make any sense. It opens innocent Americans to the unrestricted surveillance of wholly innocent conversations by the Federal Government. This is not what Americans expect or deserve.

We must act to ensure that such communications caught in the widely cast net of surveillance are segregated or specifically designated so that privacy concerns can be minimized. This amendment, the Feingold-Webb-Tester amendment, would require that this information be kept apart as a way to protect the privacy rights of those people who innocently find themselves under surveillance. The content would not be destroyed, but investigators

would have to go through additional steps in order to access it in the future.

The Foreign Intelligence Surveillance Act is meant for foreign surveillance. Our amendment reiterates that focus and it protects Americans from the accidental but very real intrusion of our right to privacy. I don't want my granddaughter, my wife, your kids, or any other Americans to have their communications monitored, stored away, and then easily accessible at a later date. This amendment ensures that doesn't happen.

I urge my colleagues to support this amendment. I think it is critically important for the success of this bill and to protect innocent Americans' civil liberties.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from Virginia is recognized.

Mr. WEBB. Mr. President, I also rise in support of this amendment, which I am very proud to be cosponsoring along with the Presiding Officer and Senator TESTER. I appreciate also the support of a number of other Members of this body on this bill.

I wish to start by saying I consider myself to be very much a realist when it comes to the intelligence services in the United States and when it comes to the use of classified information. I got my first security clearance when I was 17 years old. I have been involved in the intelligence world all of my life. When I was Secretary of the Navy, I was privileged to have ''black'' security clearances in a number of areas with some highly sensitive information. I understand the complexities of this environment.

I also am very sensitive to the massive instantaneous flow of data that now exists in today's world that makes it essential we have more rapid procedures in place in order to intercept key transmissions. But that also gives us the responsibility to ensure that with this higher volume of communication, we don't allow mistakes and abuse, because that potential also rises.

Simply stated, this amendment is designed to allow our Government on the one hand to aggressively fight terrorism but, on the other, to protect our vital constitutional rights and our system of checks and balances.

This amendment will neither stop nor slow down any of our vital intelligence activities. I wish to reemphasize that. There is nothing in this amendment that will slow down the ability of our intelligence services to do the job they are supposed to do.

The American people have been following this debate. The law is a complex law; we recognize that. But the arguments advanced by many in this Chamber have not focused fully on the broad constitutional issues about which Americans have concerns. We care about keeping our Nation safe from further terrorist attack. But we also must care just as deeply in this body about making sure our Government's surveillance is done in a way that is consistent with our Constitution.

I agree with my colleagues—many of whom sit on the Intelligence or Judiciary Committees—this law needs to be updated for all the reasons I mentioned. I am very proud of our Government's trained professionals who have worked so tirelessly for the last 6½ years, since 9/11, in their effort to help keep our country safe.

But while the means of electronic communication surveillance have rapidly modernized, the speed and overwhelming volume of those communications still requires us to maintain a balanced Federal system, with proper checks and balances against the improper use of governmental authority. The broader the governmental authority, the greater is our responsibility to ensure this authority is narrowly and properly applied.

The watchwords of this debate, from our perspective, are: Safety. Security. Fighting terrorism. But also oversight—oversight of the executive branch, proper checks and balances. Those watchwords should guide us.

The Senator from Wisconsin has completed an exhaustive explanation of the nuts and bolts of this amendment. The Senator from Montana has added to that. I will not belabor their explanations of those finer points. But I emphasize our amendment will do what the American people have been demanding: restore a proper system of checks and balances in our Government's surveillance program. Every Member of this body—and every American, no matter which political party or persuasion—supports the fundamental bedrock concept of checks and balances, concepts we have captured in this amendment's provisions.

As I mentioned, this amendment allows our Government to fully and effectively monitor communications in order to keep us safe from terrorist attack, in every conceivable way. It permits our Government to acquire any foreign-to-foreign communications. It permits our Government to acquire any communications of suspected terrorists into or out of the United States. It permits our Government to acquire any communication where there is reason to believe the acquisition is necessary to prevent death or serious bodily harm. And it permits our Government to acquire any communications for law enforcement purposes if the communication is evidence that a crime has been, is being or is about to be committed.

Simply stated, the underlying bill in this amendment bestows on our Government the essential tools to keep America safe.

On top of that, for the first time, this amendment would erect a system of oversight and accountability for communications that do not fall into the broad categories I have described.

What types of communications? They are communications that have one end in the United States and generally involve innocent Americans who are not targeted as suspected terrorists, as the Senator from Wisconsin so aptly described. In other words, it could be anyone; it could be you, it could be me. For those of us who have no ties to terrorism, an updated FISA law should and must provide proper protections.

As the Senator from Wisconsin described in his remarks, under this amendment, when the Government realizes it has acquired a communication with one end of the United States, the Government must segregate that specific communication in a separate database. For example, this could take the form of a telephone call or an e-mail.

To emphasize, so there is no misunderstanding: Even after segregating these communications, the Government can have full access to them; but the Government cannot, and should not, have unfettered access to communications of innocent Americans.

This amendment is quite simple. The inspectors general for the Department of Defense and Department of Justice would be given access to sequestered communications. These sequestered communications will allow the inspectors general to see specifically which Americans the Government surveilled or which specific communications were diverted into Government hands for possible surveillance.

Using this information, the inspectors general would be required to conduct audits of the implementation of the sequestration system and determine the extent of the surveillance. I note the inspectors general would employ staffs with appropriate security clearances. And at least once per year, they must report their findings to the Senate and House Committees on the Judiciary and Intelligence.

I believe we need this amendment for many reasons. For almost 7 years, the executive branch's surveillance program has operated in almost total secrecy, often above the law and the Constitution, and often above any review by Congress or the Foreign Intelligence Surveillance Court. For almost 7 years, only the executive branch, and perhaps a few isolated employees of telecommunications companies, have known which Americans were being surveilled. This is unacceptable in a constitutional system, whose Founding Fathers rejected the notion of an executive branch with absolute, unchecked authority. In fact, Congress rejected the notion of unchecked executive authority when it originally passed FISA, after the Watergate scandal.

There are many arguments that may be leveled against this amendment. I believe they hold no water. Some of them simply employ fear tactics to cloud the issues of constitutional propriety.

First, some may contend the underlying bill already greatly expands the authority of the FISA Court. But the problem is the pending bill requires

only a review of general surveillance processes. Administrations can, and have, abused processes. A truly robust system of checks and balances demands accountability and oversight over the specific communications obtained by the Government.

This oversight is all the more critical because, for almost 7 years now, the administration may have enjoyed completely unrestrained access to the communications of virtually every American.

Do we know this to be the case? I cannot be sure. One reason I cannot be sure is I have been denied access to review the documents that may answer these questions, even about the process. A month ago, our majority leader wrote to the Director of National Intelligence, asking that all Senators be given access to the documents surrounding the telecommunications companies' involvement in the administration's surveillance program. To this date, that request has been denied.

The denial of this request is one more reason the Senate must bring true accountability to our Nation's intelligence-gathering process. If we do not ask the tough questions and demand true oversight, how will we ever know the extent of Government surveillance or how many innocent Americans have been listened to?

Second, some will argue a process of sequestering communications will be far too cumbersome and, as the Senator from Wisconsin pointed out, this is simply untrue.

Under current law, the Government already labels the surveillance communications it collects.

Additionally, members of the Judiciary and Intelligence Committees tell me that the segregation of these communications can be easily accomplished. Finally, if our intelligence community needs additional personnel or resources to accomplish this requirement, then the Congress should promptly provide the necessary funds. Compliance with the U.S. Constitution is not a matter of option; it is mandatory.

Third, some may contend that this amendment is a partisan ploy designed to embarrass the intelligence community and the administration.

Again, this is simply untrue. I would make the same arguments if the current President belonged to my party. This amendment is not rooted in partisanship. Rather, it attempts to protect the constitutional rights of all innocent Americans.

Moreover, I recognize the tremendous work and sacrifices made by the professionals in our intelligence community, as they aim to keep our homeland safe from attack. But only through a robust system of checks and balances can we ensure the good name of our intelligence professionals and the work that they do.

In sum, I ask my colleagues to join in supporting this amendment. It is time to lay aside our differences and do what is right, time for the Congress to aggressively and responsibly assert its oversight responsibilities.

I am reminded today of a famous quote from U.S. Supreme Court Justice Cardozo. Analyzing our constitutional system of checks and balances, in 1935 Justice Cardozo wrote that executive branch ''discretion is not unconfined and vagrant. It is canalized within banks that keep it from overflowing.''

I urge my colleagues to recognize the importance of this amendment in keeping our Nation safe while also restoring an appropriate system of checks and balances to the FISA surveillance process.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Presiding Officer, in his capacity as a Senator from Wisconsin, reserves the remainder of his time on this amendment.

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I yield myself 5 minutes. I appreciate the concern of my colleagues on the other side of the aisle. But there are quite a few misconceptions and misinterpretations about the bill and about the impact this proposed amendment would have.

Again, after the chairman speaks, there are a number of members of the committee who wish to come and speak more about it.

The purpose of this bill is, and always has been, to enable the intelligence community to act to target foreign terrorists and spies overseas. To answer many of the contentions made, you cannot get a certification to begin the process, unless there are reasonable procedures to assure that the targeted persons reasonably are believed to be located outside the State. Two, the procedures are consistent with the requirements of the Fourth Amendment and do not permit intentional targeting of any person known to be located in the United States. In 2(a)(3), it says that a significant purpose of the acquisition is to obtain foreign intelligence information.

Now, the statements that somebody who has gone abroad and is calling back home to their children would be surveilled is beyond the pale. No. 1, there is a clear prohibition in the bill against targeting any U.S. persons abroad without getting a FISA Court order saying there is reasonable cause to believe, one, they are acting as an agent or officer or employee of a foreign power; and, two, they have significant information. What this amendment does, however, is strike the ability to collect information on some foreign power that may be talking about proliferation of weapons of mass destruction. Furthermore, it would prevent collection on hostile states acting in a dangerous manner to the United States.

Now, the amendment, as it is drafted, will have a totally unexpected impact. It is difficult to explain, in an unclassified session, why this amendment is unworkable. But it would say that if there is a person reasonably believed to be located in the United States, such communication shall be segregated, or specifically designated, and no person shall have access to such communication except in accordance with title I, which presumes that you have access to that information, to determine whether it qualifies under the exceptions to the prohibition.

In effect, you would have a requirement that any kind of incidental communication from a person, from a foreign terrorist target, somebody having information of foreign intelligence value or a possible terrorist attack, who calls the United States or sends an e-mail, you would have to track down and find out where every e-mail recipient may be. You would have to identify people who might be collecting that information and investigate whether they are in the United States; and you would compile a significant amount of information on U.S. persons.

The whole reason it operates with minimization is to say there are only certain communications which the intelligence community is lawfully permitted to acquire, and which it has any desire to acquire, because to acquire all the communications from all foreigners is an absolutely impossible task.

I cannot describe in a public setting how they go about ascertaining which collections are important. But to say that if Osama bin Laden or his No. 3 man—whoever that is today, after the last No. 3 man in al-Qaida was wiped out—calls somebody in the United States, we cannot listen in to that communication, unless we have an independent means of verifying it has some impact or threats to our security or a terrorist threat.

That is the most important communication we need to intercept. The Protect America Act has kept our country safe because if somebody calls in with information on a terrorist threat, then the FBI and local law enforcement officials can go to work on that threat immediately and get additional criminal authorities as needed. But that is the most vital kind of information to get. We certainly should not be required to be put in a lockbox, as this amendment would provide.

Finally, talking about expansion of surveillance powers, when FISA was first adopted, most of the collection against foreign targets came by radio, whether coming into the United States or going foreign to foreign, and there was no limitation on it. There was no limitation on intercepting radio communications.

What we have done in FISA is to impose significant new restrictions on the collection of information that might be of foreign intelligence value. We should change the definition of ''electronic surveillance,'' but we were not able to do so in this law so it would apply to collection against other forms of communications.

Suffice it to say, this bill before us, the bipartisan bill, is carefully targeted, limited, covered with layers of protection and oversight to assure minimization, as I previously suggested. Whether you believe the inspector general of NSA, the inspector general of the DNI, the Department of Justice will perform adequate oversight or not, you can be sure the Intelligence Committee will do so.

I yield the floor and reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Wisconsin.

Mr. LEAHY. Mr. President, will the Senator yield to me? I was going to ask that I be allowed to proceed, I don't think it will be more than 5 or 6 minutes, as though in morning business to give a eulogy, with the time not to be taken from either side.

Mr. FEINGOLD. I ask the Senator if I can quickly respond to the Senator from Missouri.

Mr. LEAHY. Of course. I understand.

Mr. FEINGOLD. Mr. President, responding to the comments just made, the Senator from Missouri, in responding to the Feingold-Webb-Tester amendment, tried to indicate that this will prevent us from going after spies and others from foreign states. First, under our amendment, of course the FISA Court can grant permission to wiretap spies. And, if it is a foreign state that is involved in terrorism, there would be no permission required under our amendment to wiretap the officials involved. It would not affect that.

It was also suggested this would somehow be very cumbersome. That suggests we are requiring permission for all foreign communications, but that is not true. Our amendment only affects, and only in a minimal way, communications from a foreign place to someone in the United States. That is not cumbersome.

Third, the Senator from Missouri suggests we will have to make the Government sift through all kinds of e-mails to figure out whether they can get at individual communications. That is the opposite of the way this works. This amendment creates an assumption in favor of collection. In other words, if the Government does not know for sure if a communication is foreign or domestic, the assumption is it is foreign until there is some indication that it is domestic. It is only then that the limited oversight provided by this amendment kicks in.

The final example the Senator from Missouri used shows how questionable these arguments are. If you can believe it, the Senator argued that if Osama bin Laden called someone in the United States, somehow our amendment would affect that. That is obviously false. Our amendment specifically allows an exception for any conversation by anyone in the United States with a terrorist overseas, without any special FISA Court permission. That argument shows the weakness of the opposition. The idea that the Senators from Virginia and Montana and I would suggest an amendment to not allow us to listen in on Osama bin Laden gives you a little clue that the arguments against this amendment are not based on the amendment we offered.

I thank the Senator from Vermont very much for understanding. I wanted to quickly respond to those arguments. I yield the floor and reserve the remainder of my time.

Mr. CARDIN. Mr. President, may I ask the Senator from Vermont to yield for a moment? I ask unanimous consent that I be recognized after the Senator from Vermont.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, first, I might say, in this debate the Senator from Wisconsin is absolutely correct. I was there during some of the debate on this issue and I know what he means.

(The remarks of Mr. LEAHY are printed in today's RECORD under ''Morning Business.'')

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, with the forbearance of the Senator from Maryland, I wish to place our situation in context because we have a number of things going on, and I would like the Parliamentarian to explain it to me so it is very clear to all of us.

Before I do that, I am reading at the direction of the leader his unanimous consent request, and that is to have the time from 5:20 p.m. to 5:30 p.m. be reserved for debate on the motion to invoke cloture on the motion to proceed to H.R. 5140, the economic stimulus bill; further, that the time be equally divided and reserved for the two leaders or their designees, with the Republicans controlling the first 5 minutes and the majority controlling the final 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROCKEFELLER. Now I would like to ask the Parliamentarian to help me be sure and our Members on the floor and others what our situation is. The chairman of the Judiciary Committee has just given an extraordinarily moving tribute to a very dear friend of his—extraordinarily moving—but that came in between. Now, the Senator from Pennsylvania has come upon the floor and he wants to say certain things, and there are people in the gallery to whom this would have a direct effect, so there is a temptation to go along with that. On the other hand, we are still on the Feingold amendment. I believe that to be the pending amendment, if the Parliamentarian declares that to be the case.

On the other hand, the person who is listed second on the order of the day is the Senator from Maryland. In the matter of how many years we should wait before going back to this, if we do, he was in fact the second person on the order of the day for the second amendment. He is here. He has been waiting and he wants to present that amendment. So it is 4 o'clock and we have a variety of things before us, and I wish the Parliamentarian to set us straight as to where we are.

The ACTING PRESIDENT pro tempore. The Feingold amendment is the pending amendment. There is time remaining for debate on that amendment. However, an order has been entered for the Senator from Maryland to offer his amendment, on which there is 60 minutes of debate, and that is to come next.

Mr. ROCKEFELLER. I don't know how much time is remaining on both sides with respect to the Feingold amendment.

The ACTING PRESIDENT pro tempore. On the Feingold amendment, the majority has 7 minutes 39 seconds, and those opposing have 37 minutes 27 seconds.

Mr. ROCKEFELLER. If this Senator does his mathematics, that takes us already past the time of the unanimous consent.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. ROCKEFELLER. Of course, we don't have to use all our time. Therefore, I would encourage our colleagues not to do so, and yet to get out the full body of the amendment.

I appreciate the response of the Parliamentarian, the Presiding Officer, and I yield the floor.

Mr. LEAHY. Mr. President, I support providing the Government with the flexibility it needs to conduct important surveillance of overseas targets. Both the Intelligence Committee's and the Judiciary Committee's versions of this bill would allow the Government to intercept all communications of overseas targets, including those communications with people inside of the United States. However, this also means that the Government will necessarily be acquiring the communications of innocent Americans.

I commend Senators FEINGOLD, WEBB, and TESTER for crafting an amendment that will help to safeguard the privacy rights of innocent Americans whose communications are acquired during the surveillance of overseas targets. This new FISA legislation will grant the Government authority to conduct surveillance on overseas targets concerning ''foreign intelligence.'' This term covers a broad range of subjects and the new authority would permit the Government great latitude to intercept communications without a court order. Once Americans' communications are collected, they can be shared widely with other agencies. This Feingold-Webb-Tester provision permits unfettered acquisition of foreign-to-foreign communications and of communications of suspected terrorists into or out of the United States while creating safeguards for communications not related to terrorism that

the Government knows have one end in the United States. If the Government is not able to determine beforehand whether a communication will be into or out of the United States, it can acquire all of those communications without prior court approval. What this amendment does is add the very reasonable protection that if it is later determined that a communication involves a person in the United States, measures will be taken to segregate that information to assure that privacy is protected appropriately. There are exceptions even then to make sure that national security is never placed at risk. If the communication involves terrorism or a suspected terrorist, if someone's safety is at stake, the Government can then access, analyze and disseminate that communication.

This amendment is an important check to ensure that the new authority we will grant with this bill is used as intended. Without it, many law-abiding Americans who communicate with completely innocent people overseas will be swept up in this new form of surveillance, with virtually no judicial involvement or oversight.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Mr. President, let me thank my friend from West Virginia for clarifying the floor circumstances as best we can.

AMENDMENT NO. 3930 TO AMENDMENT NO. 3911

Mr. President, I ask unanimous consent to lay aside the pending amendment, and I call up amendment No. 3930.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. CARDIN], for himself, Ms. MIKULSKI, Mr. LEAHY, Mr. ROCKEFELLER, and Mr. SALAZAR, proposes amendment numbered 3930.

The amendment is as follows:

(Purpose: To modify the sunset provision)

On page 54, line 16, strike ''2013.'' and insert the following: ''2011. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2011.''.

Mr. CARDIN. Mr. President, first let me thank my colleagues for their patience. We are trying to get through a series of amendments on the FISA legislation.

The amendment I am offering is one that was approved by the Judiciary Committee, one that I think is very important to this legislation moving forward, and one which would establish a 4-year sunset for congressional review. I am proud that my cosponsors of this amendment include Senator LEAHY, Senator ROCKEFELLER, Senator MIKULSKI, and Senator SALAZAR, and I thank the distinguished chairman of the Intelligence Committee, Mr. ROCKEFELLER, for his leadership and for his help in regard to the amendment I am bringing forward.

I wish to go back a little in time to when the original FISA statute was passed. During that period of time, we had recently come out of Watergate. There were certainly indications of warrantless surveillance done on Americans because of their disagreement with the administration in power, there were indications of warrantless surveillance of individuals because they happened to disagree with U.S. policy in Vietnam, and there was genuine concern that we had not balanced properly the Government's need to obtain information in order to keep us safe and the protections of the civil liberties of the people who live in our own country. So we tried to enact a statute that would provide balance in 1978. There was the Church committee report, and in 1978 Congress passed the FISA statute.

I want to start by quoting from one of our colleagues, Senator KENNEDY, and what he said in 1978 about the original passage of the FISA statute—the Foreign Intelligence Surveillance Act of 1978. He said:

The complexity of the problem must not be underestimated. Electronic surveillance can be a useful tool for the government's gathering of certain kinds of information; yet, if abused, it can also constitute a particularly indiscriminate and penetrating invasion of the privacy of our citizens. My objective over the past 6 years has been to reach some kind of fair balance that will protect the security of the United States without infringing on our citizens' human liberties and rights.

The Attorney General at that time for the Carter administration was Griffin Bell. Attorney General Bell said:

I believe this bill is remarkable not only in the way it has been developed, but also in the fact that for the first time in our society the clandestine intelligence activities of our government shall be subject to the regulation and receive the positive authority of a public law for all to inspect. President Carter stated it very well in announcing this bill when he said that ''one of the most difficult tasks in a free society like our own is the correlation between adequate intelligence to guarantee our Nation's security on the one hand, and the preservation of basic human rights on the other.'' It is a very delicate balance to strike, but one which is necessary in our society, and a balance which cannot be achieved by sacrificing either our Nation's security or our civil liberties.

A lot has happened since 1978 when that law was passed. We know that technology has changed and the law has been amended over its life, but we still have the same problem: how to balance our need to get information, which is important for the protection of our Nation, and the civil liberties of our citizens.

I am proud to represent the people of Maryland. I am proud of the work done by NSA—the National Security Agency—which is located in Maryland. I have visited the National Security Agency on many occasions. These men and women, dedicated to a mission of protecting our country by getting lawful information which is important to preserve the security of America, do their job with great distinction and great dedication to our country.

But we have seen in recent years the difficulty in complying with the FISA statute. Information obtained from foreign sources, because some communications come through America with the new technologies and the way in which communications are now handled today, is different than it was back in the 1970s. So we need to pass this statute. I think everyone here is prepared and understands the need for us to modernize the FISA statute, but we have to get it right.

Let me mention one debate that has been taking place on this floor that the chairman and the Republican leader on the Intelligence Committee have talked frequently about, as has the leadership on the Judiciary Committee, and that is the minimization rules. We think we have it right now, but we are still concerned about the minimization rules. It is interesting to go back in history and look at what the Senate Judiciary Committee said in 1978 about the concerns of Americans being caught in the web but not being the main focus of our target for surveillance. The Senate Judiciary Committee observed:

Also formidable, although incalculable, is the chilling effect which warrantless electronic surveillance may have on the constitutional rights of those who were not targets of surveillance, but who perceived themselves, whether reasonably or unreasonably, as potential targets. Our Bill of Rights is concerned not only with direct infringements on constitutional rights, but also with Government activities which effectively inhibit exercise of these rights. The exercise of political freedom depends in large measure on citizens' understanding that they will be able to be publicly active and dissent from official policy within lawful limits, without having to sacrifice the expectation of privacy that they rightfully hold. Warrantless electronic surveillance can violate that understanding and impair that public confidence so necessary to an uninhibited political life.

That is what we are concerned about here. We want to make sure we get this right, and we know that over time we have seen abuses of the statute. We are now concerned about what happens when an American is targeted. They didn't think about that before, about someone traveling abroad. I congratulate the committee for bringing forward a bill that does protect Americans who are traveling abroad and are a target of surveillance by requiring cause be shown. That is how it should be.

I am very concerned about the debate we are having in this body concerning the exclusivity in the statute we are going to pass. There has been a long history of debate as to how much article II power the President has in regard to warrantless surveillance. This is not a new subject. But I must tell you, I think this administration took that issue to a new level. I believe the courts agree that the President went

too far. So it is our responsibility to try to get this right so that we have the rule of law behind what the administration does, rather than trying to use article II power, which in fact can very easily be abused.

There is another issue I want to comment on briefly—and I will come back to the sunset provisions as to why I think the 4 years is so particularly important in this legislation—and that is the immunity issue and the retroactive immunity. Retroactive immunity concerns me. I would hope it would concern every Member of the Senate. It concerns me not just as it affects the telephone companies in their cooperation with this administration—because there has been clear evidence that they operated under the authority that the administration had this power and that they were helping their country—but what concerns me about granting them retroactive immunity is the impact it will have on the courts' oversight of the abuse of privacy by the administration or private companies.

We need the courts actively involved here. We don't get this right all the time, and certainly the administration doesn't get it right all the time. We need the courts involved in these issues. If we grant retroactive immunity, we are saying we reserve the right to take away the third branch of Government—the judicial branch of Government—for making determinations as to whether an individual's right of privacy is violated. I don't think that is something we want as a legacy of this Congress. That is why many of us are concerned about using retroactive immunity.

There are other options that are out there. I see my distinguished colleague from Pennsylvania, Senator SPECTER, is here. He has a proposal that I think would take care of the concerns of the telephone companies yet protect the integrity of the courts. I congratulate him for that recommendation, and I think he has now refined it to the point that I hope it will garner the type of support necessary for approval by this body.

Senator FEINSTEIN has a proposal that, rather than just giving immunity, would at least have the courts make the determination as to whether the telephone companies are entitled to this relief; whether they acted in good faith. So at least we have the courts involved in this decision rather than taking away their authority. I think either of those recommendations would be a major improvement over giving retroactive immunity to telecommunication companies.

But let me get to the specifics of the amendment I have offered, which is the 4-year sunset on the provisions. Again I am pleased to be joined by several of our colleagues. It is interesting to point out that sunsets have been part of the FISA statute for a long time. When the USA PATRIOT Act was passed, it contained a 4-year sunset. Now why did we put a 4-year sunset in? We were worried about whether we got it all right. This is something that required the continued attention of the Congress and the administration. In fact, we reauthorized it with significant changes and then put in another 3-year sunset, in this case for one of the most controversial provisions. So this is something we have done in the past.

The Protect America Act is a major departure from the PATRIOT Act. It was passed hurriedly, and no one denies that. It was passed hurriedly last August, and we weren't comfortable with what we did. The proof is the bill now before us is a much better bill. Thank goodness we had the sunset. The committee recognized the need for a sunset because they put a 6-year sunset in.

Why do I think it is so important to change that 6 years to 4 years?

Let me tell you why: I think it is in our national interest that the next administration taking office in January of 2009 be focused on this issue, this vital issue of getting the intelligence information that is critical to protect the safety of the people of this Nation but also to protect the civil liberties of Americans.

I think it is vital that the next administration look at those opinions that came out of the Attorney General's Office and the White House and give a fresh look to it and try to figure out if there is not even a better way to accomplish both the collection of information and the protection of civil liberties.

If we continue the 6-year sunset, there will be no requirement for the next administration to take a look at this statute. With a 4-year sunset, it will come under the watch of the next administration.

It is very interesting that one of my colleagues talked about the opportunity to review documents, and I believe the distinguished chairman of the Intelligence Committee would agree with me—from the fact that we had a sunset on the bill we passed in August, we got a lot more attention from the administration on getting material. They brought a lot of material into our office so we could review it. They cooperated with us because they knew we had to act. If we include a 6-year sunset, there will be no requirement for the next administration to engage Congress on this issue. I want the next administration to engage Congress on this issue.

We have seen the change in technology since we passed this bill in 1976, and technology is changing more rapidly than ever before. We do not know the next way in which terrorists are going to be using it in order to try to circumvent our detection as well as our laws. We do not know that. So it is important for us to stay engaged so that we can have the most effective tools in place, not using the article II power of the President but having Congress engaged and making sure we have the statutes correct.

It is another reason I think it is very important to have a 4-year sunset. I know I am not telling you something you do not already know, but the FISA statute gives the administration extraordinary powers and very sensitive powers as it relates to the privacy of people here in America and an issue on which we have to make sure we protect the rights of our citizens.

So for all of those reasons, we want to stay engaged on this subject. Again, I want to emphasize this is not a question of no sunset versus a 6-year sunset. I understand the administration wants no sunset. I can understand that. The President probably would want no Congress. But the Framers of our Constitution understood the importance of the legislative branch of Government. It is rated as No. 1, article I.

I urge my colleagues to support this amendment. It is an amendment that is offered in good faith. I would encourage my colleagues to support the amendment.

I reserve the reminder of my time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. This Senator would add an additional complication but one which is necessary and highly important.

Senator LEAHY, as I indicated, gave a very moving statement. We now have two more Senators on the floor who wish to discuss equally tragic circumstances with members of either the family or close friends in the gallery, which means we cannot postpone, for a variety of reasons which the senior Senator gave me.

I ask unanimous consent that we set the pending amendment aside temporarily and first call upon the junior Senator from Pennsylvania and then the senior Senator from Pennsylvania to make a few short remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. The junior Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. CASEY and Mr. SPECTER pertaining to the submission of S. Res. 442 are printed in today's RECORD under ''Submitted Resolutions.'')

(The remarks of Mr. SPECTER pertaining to the introduction of S. 2591 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. SPECTER. Mr. President, I thank the managers of the bill for the time.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, in the absence of the Senator from Maryland, I yield myself 5 minutes from the time controlled by Senator CARDIN on his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3930

Mr. ROCKEFELLER. Mr. President, this Senator supports the amendment of the Senator from Maryland to revise the sunset provision of the bill so that the new authority established under this act will expire after 4 years.

This Senator had originally started out supporting a 4-year sunset because it seemed to make sense because it comes during the next President's term in office.

This is supremely important legislation. There is no one—with the exception of the administration—who has objected, no committee which has objected to the idea of considering a sunset review. The reason is very clear: One wants to make sure, when you are balancing foreign intelligence collection, intelligence collection in general, and civil liberties, that one has the right balance. The question before us today is what date in the future makes the most sense for a sunset.

There are a number of new initiatives which are either proposed to be started in this legislation or which will be started in this legislation, and none of them are entirely predictable.

I think a 4-year sunset makes a lot of sense because it is so important that we know what we are doing, that we know we are doing it right, and that we know the intelligence community knows it is doing its work correctly—I do not mean badly or superbly but simply that they are getting it the way they want to do it and it is compatible with the spirit of the law, that the Congress and the administration are in sync on it. We do this before we settle this into permanent law.

This is all new. Everything changed on 9/11. Many considerations under the law, particularly with respect to the gathering of intelligence and the protection of privacy, changed. This is especially important in light of the rapid pace of change in telecommunications technology—one of the main reasons were are here today revising FISA.

I think we need to have a 4-year sunset amendment. I do think it is important that the intelligence community, the Congress, and the administration come back together in 4 years. Congress, obviously, can bring it up anytime we want. On the other hand, if we do it this way, with a 4-year sunset amendment, it obliges all participants to come to participate. That is the way we get resolved what works and what does not work, and we learn from the intelligence people, and they learn from us, as to what we think is the best way to proceed.

So I do strongly support that amendment. It would take us to December 31, 2011. This four year period would give the intelligence community ample time to move ahead but it also ensures that the decision on permanency is made when Congress and the executive branch are prepared to evaluate the legislation again. As I have indicated, I support the amendment.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Republican floor manager, I think by our tradition, is to be recognized.

Mr. BOND. Mr. President, I thank the Chair.

I appreciate the opportunity to share a few views on the amendment. Again, on this measure, as on the others, I have a number of my colleagues who have indicated a desire to speak on it, so I am only going to take a very few minutes.

But let's be clear: When this issue came before the Intelligence Committee, we worked on a bipartisan basis to compromise. I think we had, as I have said before, a very good compromise. Everybody gave. I did not want any sunset. I felt providing our intelligence community the ability to establish a good, strong, adequately protected but yet effective means of intercepting foreign intelligence communications was vitally important so the intelligence community would know they had this ability.

Moreover, I have had the opportunity, in the last couple years, to meet with many of our allies abroad. Our allies depend upon our ability to intercept communications that lead to the disruption of terrorist attacks in other countries.

Again, I ask my colleagues who want to know what the Protect America Act has done to review the classified communication that the Director of National Intelligence sent us saying how many times and where in foreign countries we were able to provide vital information through our collection of electronic signals to the governments that wanted to be able to prevent terrorist attacks and were significantly enabled to do so by means of our collection efforts. Probably the reason for keeping it a permanent law was best expressed by the Attorney General, Mike Mukasey. When he was asked about why we shouldn't have a sunset, he said: The enemies, the Islamist terrorists who want to do us harm, do not put a sunset on their fatwas, their orders to go out and kill Americans and kill our allies and kill our troops abroad.

There is no immediate prospect of cessation of foreign terrorist activities or proliferation of weapons of mass destruction or even threats from countries that are absolutely hostile and dangerous to the United States. To put an artificial time limit on it makes no sense.

I have a different view of what the Intelligence Committee should be doing. One of the things we see, as we have discussed some of these amendments, is that those of us on the Intelligence Committee have special access to all this information, but we have a heavy responsibility. We try to carry it out well. Every time we explain on the floor what our intelligence activities are concerning, even in an unclassified setting, the more we talk about it, the more our enemies—those who would seek to do us harm—learn about our intelligence collection capabilities. Bringing this back to the floor will enable them, once again, to learn more about what we are doing and when we are doing it.

Frankly, having a sunset that expires just before a new administration is sworn in after the 2012 elections seems to me not to make much sense. If there are changes needed in the Foreign Intelligence Surveillance Act amendments of 2008, it is our job on the Intelligence Committee to conduct continuing oversight. If there is a problem with that activity, if it is inadequate or if it is not properly regulated, then it is our job in our oversight hearings to bring that to the floor and bring that particular fix or that particular change that is needed to the floor immediately. We shouldn't wait 6 years or even 4 years. If we need to fix it, we need to find out what fixing is needed, and we need to take those steps at that time, not wait for 4 years or 6 years. All we do by setting an artificial time limit on it is to say to those who seek to do us harm: Well, if you go past the deadline, who knows? Maybe the Congress will not be able to adopt an extension. Maybe we will be able to communicate with our operatives in the United States and elsewhere without surveillance. It causes uncertainty in the intelligence community, and I believe it is not wise to cut back on the compromise we reached on a bipartisan basis in passing out the FISA amendments of 2008 by a 13-to-2 vote.

So I urge my colleagues to vote against this amendment.

I yield the floor, and I reserve the remainder of the time on this side.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, first, let me thank the distinguished chairman of the Intelligence Committee for his support for this amendment. He has helped in bringing it forward. Let me respond, if I might, to Senator BOND's points.

First, let me point out that the cooperation we receive from the executive branch is very much enhanced when they know we have to pass a statute. All we need to look at is the cooperation we have received over the last several years from this administration to know that when we get to a point where Congress needs to act, we get the help of the administration in bringing us on board.

As to the comments by the Republican leader on the committee that the terrorists don't have sunsets, they also don't have a legislature. They don't have democracy. They don't have any process that is open. They have no respect for civil liberties. We fight for this Nation because of what this Nation stands for. We know there are abuses of power, and we have a responsibility to take action on them. Sunsets have worked on the FISA statute.

My colleague from Missouri has supported sunsets at different times during the process. We had it in the PATRIOT Act, and in the renewal of the PATRIOT Act we still have sunsets. We had sunsets on the original Protect America Act, and the bill that came out of the Intelligence Committee has a sunset in it.

I understand the administration is against sunsets. I understand that. I don't agree with the administration's view and the way they use the power that was given to them—that they thought was given to them. I think they have abused it at times. Thank goodness we had oversight to try to rein that in, and thank goodness we had the courts looking at what they were doing.

So the point is whether it should be 6 years or 4 years. I think it is critically important that the next administration work with this Congress to take a look at how this administration used the power and take a look at the legal opinions that were written so we have a comfort level between Congress and the next administration on protecting the security of America and protecting the civil liberties of the people who live in this Nation. That is why I believe the 4-year sunset is so important.

I respect the view of my colleague from Missouri as to the predictability of statutes. We are not going to let the authorities expire. We are going to carry out our responsibility. We know that. There is not a person who is a Member of this body who disagrees with giving the appropriate tools to the intelligence community.

As I said earlier, I am very proud of the work that is done at NSA in the State of Maryland by dedicated men and women. They can't send out press releases when they do things that are very important to our country in protecting our security. They do a great job. We owe them the type of support that includes a statute that is definitive and makes sense and that we pass; also, that we continue to be their partners and continue the oversight with the change in technology and continue to work with the executive branch to make sure we get it right.

I urge my colleagues to support the amendment. I reserve the remainder of my time.

Mr. LEAHY. Mr. President, I think we all recognize that this legislation would provide broad and untested new powers to the executive branch. We are willing to do that in order to protect our national security. But this surveillance does not just affect foreign targets; it also affects the privacy rights of potentially millions of American citizens. That is why it is so important that we get this right. And that is why I support Senator CARDIN's amendment, which would reduce the sunset provision of this bill from 6 years to 4 years.

We are dealing with untested procedures; we have no assurance that what we are doing now will properly protect national security or the privacy rights of Americans. Many questions remain about how the new authorities that Congress is prepared to grant will be implemented, whether they will be effective, and—equally important—the extent to which they will intrude on innocent conversation of Americans. As we understand more about these authorities—and perhaps as technology allows us to improve our approach to this important surveillance—the executive branch and the Congress should reevaluate these sensitive authorities.

There is too much here that is new and untested to allow the authorities to go longer than even expiration of the next President's term before requiring a thorough review. A 4-year sunset makes sense. It will allow the next President 3 years of experience under these authorities to monitor how these new powers are being carried out. And it is an appropriate time for the Congress to evaluate whether the legislation strikes the right balance between national security needs and Americans' civil liberties.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Senator from Maryland for his leadership on the sunset issue. I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 3915 TO AMENDMENT NO. 3911

Mr. FEINGOLD. Mr. President, I call up amendment No. 3915.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. DODD, proposes an amendment numbered 3915.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To place flexible limits on the use of information obtained using unlawful procedures)

On page 17, strike line 20 and all that follows through page 18, line 11, and insert the following:

''(B) CORRECTION OF DEFICIENCIES.—

''(i) IN GENERAL.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(I) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(II) cease the acquisition authorized under subsection (a).

''(ii) LIMITATION ON USE OF INFORMATION.—

''(I) IN GENERAL.—Except as provided in subclause (II), no information obtained or evidence derived from an acquisition under clause (i)(I) concerning any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(II) EXCEPTION.—If the Government corrects any deficiency identified by the Court's order under clause (i), the Court may permit the use or disclosure of information acquired before the date of the correction pursuant to such minimization procedures as the Court shall establish for purposes of this clause.

Mr. FEINGOLD. Mr. President, this amendment is a provision that was part of the Judiciary Committee bill. It was included in a larger substitute amendment adopted in that committee that was sponsored by Senator LEAHY and cosponsored by Senator FEINSTEIN, Senator SCHUMER, and others.

This amendment puts no additional limits on the Government's ability to target people overseas under this legislation or to collect information about those people. All it does is help ensure that the Government's procedures follow the requirements that are laid out in the bill. It fixes an enormous problem in the Intelligence Committee bill: the complete lack of any incentive for the Government to do what the bill tells it to do, namely, target people overseas rather than people in America.

There are many aspects of this bill that have generated strong disagreement, but one thing on which everyone in this Chamber should agree is that the Government should not be using these authorities to target the conversations of innocent Americans in their homes and offices in the United States. For that, the Government should have to get an individualized court order, as it always has.

The bill requires the Attorney General, in consultation with the Director of National Intelligence, to adopt targeting procedures that are reasonably designed to ensure that only people outside the United States are targeted. The bill also requires the Attorney General, in consultation with the Director of National Intelligence, to adopt minimization procedures to govern the retention and dissemination of information about Americans that is captured in the course of the surveillance.

All of this sounds good. The targeting procedures, in particular, are one of the few safeguards built into this legislation. Yet, remarkably, the Intelligence Committee bill does nothing to ensure the Government will follow them. They are basically non-binding. The FISA Court does not have to approve the procedures before they are

implemented. If the Government develops procedures that target Americans in this country, in violation of the law, the FISA Court can reject those procedures and require them to develop new ones but only after those procedures have already been in effect.

The bill does nothing to stop the Government from continuing to use and share the information it collected under those illegal procedures. Think about that. The Government develops and implements procedures the FISA Court later finds out are not reasonably designed to target people who are outside the United States, meaning the procedures likely permit the targeting of Americans here at home—something we all agree should not be permitted under this bill. Yet if the Government has been using those unlawful procedures while the FISA Court reviews them, it can keep and freely share any communications it gathered. In theory, the Government could play this game indefinitely, periodically revising its procedures and all the while using and disseminating information that has been illegally collected under prior procedures rejected by the court.

My amendment would solve this problem, at least in part, by allowing the FISA Court to put limits on the use of information about Americans the Government has gathered using procedures the court later finds do not comply with the requirements of this legislation.

These types of use limitations are not a new concept. Indeed, they are borrowed from another part of FISA. Under current law, if the Government in an emergency starts surveillance of an American without a court order and the court later determines the surveillance was not lawful, FISA places limits on how the Government can use that unlawfully gathered information. It is simple common sense: If the Government wasn't supposed to obtain this information under the law, then the Government shouldn't be permitted to use this information except in a true emergency. Otherwise, the limit on obtaining the information in the first place isn't worth the paper it is printed on—it's just there for show.

This amendment adopts the same basic idea, but with significantly more leeway for the Government. Under the amendment, if the Government collects information using unlawful procedures, the default is that the Government may only use the information regarding U.S. persons—namely, the information the Government was never supposed to collect in the first place—in an emergency involving a threat of death or serious bodily harm to any person. But the Government can continue to freely use information collected on foreign persons.

The amendment also provides significant additional flexibility. It gives the FISA Court discretion to allow the Government to use even information about U.S. persons—information collected illegally—as long as the Government ultimately fixes the defective procedures. That is a very broad exception to the use limitation, but importantly, it is an exception that is overseen and applied by the FISA Court.

This is the bare minimum we could possibly do to encourage the Government to adopt and adhere to lawful targeting and minimization procedures in the first place. The practical effect of this amendment is simply to give the FISA Court the option of prohibiting the use of information about U.S. persons obtained illegally—in violation of the very act we are debating. Given the FISA Court's history of overwhelming deference to the executive branch, it is quite clear the court will exercise this option, if ever, only in the most egregious cases of Government excess or abuse. And as I said before, the Government will always have the ability to use information about foreign persons and any information that indicates a threat of death or serious bodily harm.

Just to be clear, no one is talking about holding the Government to a standard of perfection. The bill we are debating does not require the Government to develop procedures that ensure that in every instance, only people overseas are targeted. Instead, it requires the Government to develop procedures that are reasonably designed to target people who are reasonably believed to be outside the United States. So the use limitation I am proposing would come into play only if several things happen: First, the Government failed to get court clearance for its procedures before implementing them; second, the procedures were not even reasonably designed to meet the modest goal of targeting people reasonably believed to be overseas; third, the Government failed to correct the problem when given a chance to do so, or the FISA Court decides not to allow the use of the illegally collected information despite the procedures being fixed; fourth, the information involves a U.S. person; and fifth, the information does not indicate a threat of death or serious bodily harm. All these things have to be true in order for there to be any limitation here at all.

This is an extremely modest safeguard against unlawful procedures and one that gives the Government ample leeway to develop sound targeting procedures while simultaneously getting and using the information it needs.

It comes down to a very simple question: Do we mean what we say when we declare that Americans in this country should not be targeted under the powers we are giving the Government in this legislation? If we do mean what we say, we should have no problem saying that the use of information obtained through procedures that target Americans can be blocked by the FISA Court, since that information should never have been obtained in the first place. If we don't say that, then the targeting and minimization requirements are really just suggestions, and the supporters of the bill are not serious when they say they only want to go after foreigners overseas.

This amendment is based on a commonsense provision that already exists in FISA, with significant additional flexibility for the Government. It gives the Government a modest incentive to comply with the law, without taking away any of the legitimate tools it needs to respond to foreign threats. And it was already adopted by the Judiciary Committee.

I urge my colleagues to support the amendment, and I reserve the remainder of my time.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Missouri.

Mr. BOND. Madam President, I rise in opposition to another amendment that has been argued very strongly on the other side but which would impose additional operational burdens and limit the ability of our collective agencies in the intelligence community to get the information they need and to be able to use it to keep our country safe.

We have gone through all of these, and we have worked to develop much greater protections for American citizens. One of the protections the American citizens seek from us is the protection from foreign attack and terrorist attack. If we hamstring our intelligence community—as they were hamstrung under the new techniques under the old FISA law—you will find out we cannot collect the information we need. This burden—this superexclusionary rule—goes far beyond what is necessary to protect American citizens.

While supporters of the amendment may argue that a similar rule appears elsewhere in FISA, it is important to remember that rule is limited to individual domestic surveillance and searches, where the court has found there is no probable cause to target that person. That is very different and is a very important protection for Americans from searches and seizures and surveillance without a court order—not a properly developed court order.

This amendment tries to apply that same rule to foreign targeting, when there may be a deficiency identified in the targeting or minimization procedures. Applying an exclusionary rule in the context of a domestic surveillance involving a small number of targets is manageable and it must be done to protect Americans. It makes no sense if there is no finding of probable cause. That is the threshold under which that rule applies. But it makes no sense to exclude the use of information simply because there is a deficiency—any deficiency—in the certification or procedures used to target foreign terrorists overseas. That is whom we are talking about; that is the overwhelming amount of the collection—against foreign targets, foreign terrorists, and others with weapons of mass destruction plans or proliferation or foreign powers. It makes no sense to say a deficiency, which can be corrected, should

require all the information collected to be suppressed.

For example, this automatic suppression rule would make the Government temporarily sequester significant amounts of data, potentially, that might contain vital foreign intelligence information—obviously, there is a qualification—but not amount to information that indicates a threat of death or serious bodily injury during a period of time when the Government is attempting to correct a relatively minor or inadvertent deficiency.

That is unreasonable, and it is one more administrative burden to place on the intelligence community. Moreover, the Intelligence Committee's bill already provides an adequate remedy if the FISA Court ultimately determines that the collection is improper; it may order the Government to cease collection.

The court then has the inherent authority to fashion an appropriate remedy to address the collection and the contents that have been collected in a manner inconsistent with the law and the authorities of the collecting agency.

This amendment does not fix a problem with the statute. Instead, it potentially creates a problem that could have unintended operational consequences for our intelligence community. They don't need any more burdens. They have all the challenges they need in trying to intercept, translate, incorporate, and divine the intents of terrorists. There is more than enough work to do for our intelligence analysts just to stay within the existing boundaries we have applied in the protection for American citizens, without them having to fear we will lose vital foreign intelligence collection information because there was some minor deficiency that may later be identified by the court. That would make our country less safe and it is not warranted.

Therefore, I encourage my colleagues to join me in voting against this amendment.

I yield the floor to my colleague, the chairman.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Senator FEINGOLD's amendment concerns the effects of a court determination that there are deficiencies in the Government's procedures under the new authority. This is a complicated issue and I think it is important to explain why I cannot support this amendment.

I wish to add that what the vice chairman and I both believe all of this is going to be litigated in the courts for decades to come, and all that is said here by us and everybody else becomes an important part of the record.

Under the Intelligence Committee bill, the FISA Court is required to review the Government's certification, targeting procedures, and minimization procedures to ensure their adequacy. If the court finds a deficiency in either the minimization or targeting procedures, the Intelligence Committee bill requires the Government correct the deficiency or cease the acquisition.

The Feingold amendment goes beyond requiring that collection be terminated or deficiencies corrected. It restricts the use or disclosure of any information collected that concerns U.S. persons.

Unless the Attorney General determines the information indicates a threat of death or serious bodily harm or the person consents, the amendment would prevent the Government from sharing or disseminating with anyone in the Federal Government any information already acquired under the new procedure that concerns U.S. persons.

I can understand that there may be, at first glance, some appeal to that idea. Senator FEINGOLD, for example, has said it is important to ensure there are consequences when the Government has not adequately developed its procedures. Hard to argue.

But looking at the consequences of this amendment in more detail makes it clear the provision is impractical. And it creates serious risks that we will lose valuable intelligence.

The language of the Senator's amendment is taken from the emergency provisions currently in FISA. Under those provisions, the Attorney General can authorize electronic surveillance without a court order in an emergency, as long as an application for an order is submitted to the court within 72 hours. If a court does not approve the FISA collection on an individual target after this emergency intelligence collection has begun, FISA prevents the intelligence collected from being ''used or disclosed in any . . . manner by Federal officers or employees without the consent of such persons,'' unless the Attorney General determines the information indicates a threat of death or serious bodily harm.

The impact of this existing emergency provision in FISA, however, is far different than the impact of Senator FEINGOLD's amendment.

In contrast to limiting the use of a small amount of information collected on one target during 72 hours of emergency procedures, Senator FEINGOLD's amendment potentially limits use of all information gathered through a new system of intelligence collection. To understand why these are different situations, it is useful to consider the difference between traditional FISA applications and orders and the new title VII provisions.

Unlike traditional FISA applications and orders, which involve collection on one individual target, the new FISA provisions create a system of collection. The court's role in this system of collection is not to consider probable cause on individual targets but to ensure that the procedures used to collect intelligence are adequate. The court's determination of the adequacy of procedures, therefore, impacts all electronic communications gathered under the new mechanism, even if it involves thousands of targets. I will repeat that.

Senator FEINGOLD's amendment applies to all of this intelligence collection. If the court finds a deficiency that the Government does not correct within 30 days, the Federal Government could not disclose any information on U.S. persons that was gathered as part of the new intelligence collection system without the consent of the person.

Thus, unlike existing emergency procedures, which limit the use of a small amount of intelligence gathered over a 72-hour period on one target, Senator FEINGOLD's amendment would potentially restrict the use of large amounts of intelligence, without regard to the importance of the intelligence.

In addition, under the Feingold amendment, intelligence analysts would have to determine whether the collected intelligence contained information concerning U.S. persons. The Feingold amendment would require the intelligence analysts to sift through all of the intelligence collected under the new process in order to identify information potentially subject to restriction.

As part of that process, analysts might be required to look at information that had not previously been analyzed in detail because it did not appear to contain significant foreign intelligence information, in order to determine whether the information concerned U.S. persons.

Senator FEINGOLD's amendment, therefore, has the potential to be more intrusive of U.S. privacy interests than the initial collection.

Finally, this limitation on use applies regardless of what deficiency is found by the court, as long as the deficiency is not corrected within 30 days. Even if the court finds a minor deficiency in the procedures and the Government is acting in good faith to correct it, this provision would require the intelligence community to prevent any disclosure of the information.

Please consider that, Madam President—to share with nobody in the Government.

In sum, this provision could restrict the use of significant amounts of intelligence based solely on minor deficiencies in procedures. It may also require the intelligence community to focus its analytical resources on satisfying this provision rather than on collecting and analyzing the intelligence needed to protect this country.

In my view, this allocation of resources makes no sense. I therefore cannot support this amendment.

I reserve the remaining time, which is about 4 minutes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, let me agree with the Chair that it is important to clarify what these amendments do and do not do, not only for purposes of voting on the amendment, but for any court consideration of this issue.

The arguments of the chairman and ranking member do not relate, in many cases, to the amendment that has been put forward. The Senator from Missouri just made the argument that my amendment differs from the use limit provisions for emergency surveillance because my amendment would limit the use of information about foreign targets. But that is not true. That is not the amendment I offered. My amendment only puts limits on information about U.S. persons. The Government can always use information about foreign persons.

With regard to the comments of the Chair of the committee, the supposed burden of identifying which communications involved U.S. persons only comes up if the Government starts its targeting procedures before it gets court approval, and then fails to keep track of what it is collecting during that time. And it only comes up if the Government procedures are targeting Americans in the United States, in which case I think there are overwhelming policy and constitutional reasons why this information needs to be retrieved and its use limited.

Moreover, if the intelligence community is concerned about this potential burden, it can do what it says it already does with information gathered using the PAA, and that is to label it. Then it shouldn't have any problem finding it later on; it shouldn't be cumbersome.

The arguments of the chairman and ranking member would yield the following result: We set up rules for the Government, the Government doesn't follow the rules, and there is simply no consequence at all. The law has no teeth. There is no incentive for the Government to follow the rules.

Again, under my amendment, the Government can use information even about U.S. persons if it indicates a threat of death and serious bodily harm, and the FISA Court can allow the Government to use any information if the Government fixes the defective procedures. On that point, I am very troubled by the arguments of the Senator from Missouri. He says that my amendment will not even allow the Government to fix the problem with its procedures. That is absolutely false. I specifically stated that the Government is given an opportunity to fix the problem. If it fixes the problem, the FISA Court can allow it to use the information.

If the Government gets a complete free pass and faces no consequence whatsoever for adopting and implementing unlawful procedures, then the law's requirements for targeting and minimization procedures and the FISA Court's oversight of these procedures have no meaning. The Government would be allowed to intrude on the private conversations of Americans with no consequences.

This amendment contains a very modest series of provisions. It gives the court and the Government tremendous flexibility. If the Government makes even a reasonable effort to address the concerns of the FISA Court, there will be no disruption of the information the Government needs—and, of course, none is intended.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, in two sentences, thousands of targets in the Senator's amendment, thousands of targets, all foreign means hundreds or thousands of pieces of intelligence. Intelligence does not come as one lump. It is an enormous array of collection of all kinds of things which are stitched together over time. All that intelligence could be lost under the Feingold amendment if there were only U.S. person information that was involved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, in response to the Senator from West Virginia, it is true that the use limits in my amendment would apply to any information about U.S. persons gathered under unlawful procedures, other than information indicating a threat of bodily harm. That is why the amendment provides significantly more flexibility to the Government than the use limits for emergency surveillance. The FISA Court can allow the Government to use even information about U.S. persons as long as the Government corrects the defective procedures. That is a huge exception that is not present in the emergency use limits provision.

The PRESIDING OFFICER. If the Senator will suspend, the Senate is operating under a previous order for 5:20 p.m.

RECOVERY REBATES AND ECONOMIC STIMULUS FOR THE AMERICAN PEOPLE ACT OF 2008—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. is to be divided between the two leaders or their designees, with the Republican leader controlling the first 5 minutes.

Who yields time?

Mr. ROCKEFELLER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS, Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, the Book of Proverbs teaches:

> Listen to your father, who gave you life, and do not despise your mother when she is old.

This afternoon, the Senate will begin to address whether we honor our mothers and fathers, our grandmothers and grandfathers. The Senate will begin to address whether we extend needed stimulus checks to 20 million seniors whom the House of Representatives left behind.

The author Pearl S. Buck said:

> Our society must make it . . . possible for old people not to fear the young or be deserted by them, for the test of a civilization is the way that it cares for its helpless members.

This afternoon, the Senate will begin to be tested. The Senate will be tested whether it cares for 20 million seniors or deserts them, as did the House of Representatives.

America's seniors deserve to get stimulus checks every bit as much as other Americans. They worked hard, very hard all their lives. They paid a lifetime of taxes. They contribute to the economy. And with the economy turning down, seniors can use the stimulus checks every bit as much as other Americans. Everyone knows the Social Security check does not pay the bills. The average retiree's Social Security check is about $1,000 a month, and with the current hard times and gas, food, and health care costs all increasing, it makes it even more difficult for them.

Two out of three Social Security beneficiaries get most of their income from Social Security. Two out of three get most of their income from Social Security. Social Security is the only income for nearly one in five seniors, and without Social Security, most older Americans would live in poverty. Without Social Security, more than 50 percent of senior citizens would be living in poverty today.

Because they can use the money, seniors are excellent targets for economic stimulus checks. Because they can use the money, they will spend it quickly.

The chart I have next to me is a reminder that the Senate bill provides rebate checks for 20 million Americans. The House of Representatives excludes rebate checks for these 20 million Americans.

Americans over age 65 spend 92 percent of their incomes. Households headed by a person over age 75 spend 98 percent of their income. That is higher than any other demographic group over the age of 25. Seniors spend their money. That means checks sent to seniors will have a greater bang for the buck in terms of helping the economy. The Finance Committee amendment will help 20 million seniors left out of the House bill. The Finance Committee amendment will provide seniors with rebate checks of $500, and the House bill will not help those 20 million seniors.

The Finance Committee amendment will also provide rebate checks for a quarter of a million disabled veterans who receive at least $3,000 in nontaxable disability income. The Finance Committee amendment would make them eligible to receive the same rebate checks as wage earners and Social Security recipients. It is not right to